

EXHIBIT 3
DATE 3-26-13
SB 226

From: Miller Richard J [<mailto:Richard.J.Miller@irs.gov>]
Sent: Monday, March 18, 2013 1:58 PM
To: Halubka, Tracy
Cc: Sponsler Douglas
Subject: RE: Special Mobile Machinery

Hi Tracy, please see the text below from Doug:

The use of dyed fuel in mobile machinery is prohibited under IRC 4082(b). This portion of the Internal Revenue Code defines "nontaxable use" as it relates to diesel fuel and kerosene. The IRC section specifically states that the term "nontaxable use" does not apply to any use under IRC 6421(e)(2)(C). IRC 6421(e)(2)(C) pertains to mobile machinery.

Thus, mobile machinery vehicle operators must use taxed, undyed fuel in their mobile machinery vehicles. The use of dyed diesel fuel is not permitted.

The mobile machinery operator may claim an excise tax fuel credit for taxed, undyed diesel fuel used in a mobile machinery vehicle if the operator meets design based and use based tests. The tests are described in IRC 6421(e)(2)(C).

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26 USC § 4082 - EXEMPTIONS FOR DIESEL FUEL AND KEROSENE

- [USC-prelim](#)
- [US Code](#)
- [Notes](#)
- [Updates](#)
- [Authorities \(CFR\)](#)

[USCPrelim](#) is a preliminary release and may be subject to further revision before it is released again as a final version.

Current through Pub. L. [112-143](#), except [112-141](#). (See [Public Laws for the current Congress](#).)

(a) In general

The tax imposed by section [4081](#) shall not apply to diesel fuel and kerosene—

- (1) which the Secretary determines is destined for a nontaxable use,
- (2) which is indelibly dyed by mechanical injection in accordance with regulations which the Secretary shall prescribe, and
- (3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations. Such regulations shall allow an individual choice of dye color approved by the Secretary or chosen from any list of approved dye colors that the Secretary may publish.

(b) Nontaxable use

For purposes of this section, the term “nontaxable use” means—

- (1) any use which is exempt from the tax imposed by section [4041 \(a\)\(1\)](#) other than by reason of a prior imposition of tax,
- (2) any use in a train, and
- (3) any use described in section [4041 \(a\)\(1\)\(C\)\(iii\)\(II\)](#).

The term “nontaxable use” does not include the use of kerosene in an aircraft and such term shall not include any use described in section [6421 \(e\)\(2\)\(C\)](#).

(c) Exception to dyeing requirements

Paragraph (2) of subsection (a) shall not apply with respect to any diesel fuel and kerosene—

- (1) removed, entered, or sold in a State for ultimate sale or use in an area of such State during the period such area is exempted from the fuel dyeing requirements under subsection (i) of section [211](#) of the Clean Air Act (as in effect on the date of the enactment of this subsection) by the Administrator of the Environmental Protection Agency under paragraph (4) of such subsection (i) (as so in effect), and
- (2) the use of which is certified pursuant to regulations issued by the Secretary.

(d) Additional exceptions to dyeing requirements for kerosene

(1) Use for non-fuel feedstock purposes

Subsection (a)(2) shall not apply to kerosene—

- (A) received by pipeline or vessel for use by the person receiving the kerosene in the manufacture or production of any substance (other than gasoline, diesel fuel, or special fuels referred to in section [4041](#)), or
- (B) to the extent provided in regulations, removed or entered—
 - (i) for such a use by the person removing or entering the kerosene, or
 - (ii) for resale by such person for such a use by the purchaser, but only if the person receiving, removing, or entering the kerosene and such purchaser (if any) are registered under section [4101](#) with respect to the tax imposed by section [4081](#).

(2) Wholesale distributors

To the extent provided in regulations, subsection (a)(2) shall not apply to kerosene received by a wholesale distributor of kerosene if such distributor—

- (A) is registered under section [4101](#) with respect to the tax imposed by section [4081](#) on kerosene, and

(B) sells kerosene exclusively to ultimate vendors described in section [6427 \(l\)\(5\)\(B\)](#) with respect to kerosene.

(e) Kerosene removed into an aircraft

In the case of kerosene (other than kerosene with respect to which tax is imposed under section 4043) which is exempt from the tax imposed by section [4041 \(c\)](#) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft—

(1) the rate of tax under section [4081 \(a\)\(2\)\(A\)\(iii\)](#) shall be zero, and

(2) if such aircraft is employed in foreign trade or trade between the United States and any of its possessions, the increase in such rate under section [4081 \(a\)\(2\)\(B\)](#) shall be zero.

For purposes of this subsection, any removal described in section [4081 \(a\)\(3\)\(A\)](#) shall be treated as a removal from a terminal but only if such terminal is located within a secure area of an airport.

(f) Exception for Leaking Underground Storage Tank Trust Fund financing rate

(1) In general

Subsection (a) shall not apply to the tax imposed under section [4081](#) at the Leaking Underground Storage Tank Trust Fund financing rate.

(2) Exception for export, etc.

Paragraph (1) shall not apply with respect to any fuel if the Secretary determines that such fuel is destined for export or for use by the purchaser as supplies for vessels (within the meaning of section [4221 \(d\)\(3\)](#)) employed in foreign trade or trade between the United States and any of its possessions.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel and kerosene pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

(h) Cross reference

For tax on train and certain bus uses of fuel purchased tax-free, see subsections (a)(1) and (d)(3) of section [4041](#).

26 USC § 6421 - GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES, USED BY LOCAL TRANSIT SYSTEMS, OR SOLD FOR CERTAIN EXEMPT PURPOSES

- [USC-prelim](#)
- [US Code](#)
- [Notes](#)
- [Updates](#)

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(a) Nonhighway uses

Except as provided in subsection (i), if gasoline is used in an off-highway business use, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such gasoline under section [4081](#). Except as provided in paragraph (2) of subsection (f) of this section, in the case of gasoline used as a fuel in an aircraft, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section [4081](#).

(b) Intercity, local, or school buses

(1) Allowance

Except as provided in paragraph (2) and subsection (i), if gasoline is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section [4221\(d\)\(7\)\(C\)](#)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on such gasoline by section [4081](#).

(2) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of gasoline used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(c) Exempt purposes

If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4) ⁽¹⁾(5), or (6) of section [4221\(a\)](#), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons of gasoline so sold multiplied by the rate at which tax was imposed on such gasoline by section [4081](#). The preceding sentence shall apply notwithstanding paragraphs (2) and (3) of subsection (f). Subsection (a) shall not apply to gasoline to which this subsection applies.

(d) Time for filing claims; period covered

(1) In general

Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), not more than one claim may be filed under subsection (b), and not more than one claim may be filed under subsection (c), by any person with respect to gasoline used during his taxable year; and no claim shall be allowed under this paragraph with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) Exception

For payments per quarter based on aggregate amounts payable under this section and section [6427](#), see section [6427 \(i\)\(2\)](#).

(3) Application to sales under subsection (c)

For purposes of this subsection, gasoline shall be treated as used for a purpose referred to in subsection (c) when it is sold for such a purpose.

(e) Definitions

For purposes of this section—

(1) Gasoline

The term “gasoline” has the meaning given to such term by section [4083 \(a\)](#).

(2) Off-highway business use

(A) In general

The term “off-highway business use” means any use by a person in a trade or business of such person or in an activity of such person described in section [212](#) (relating to production of income) otherwise than as a fuel in a highway vehicle—

(i) which (at the time of such use), is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

(ii) which, in the case of a highway vehicle owned by the United States, is used on the highway.

(B) Uses in boats

(i) In general Except as otherwise provided in this subparagraph, the term “off-highway business use” does not include any use in a motorboat.

(ii) Fisheries and whaling The term “off-highway business use” shall include any use in a vessel employed in the fisheries or in the whaling business.

(C) Uses in mobile machinery

(i) In general The term “off-highway business use” shall include any use in a vehicle which meets the requirements described in clause (ii).

(ii) Requirements for mobile machinery The requirements described in this clause are—

(I) the design-based test, and

(II) the use-based test.

(iii) Design-based test For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

(iv) Use-based test For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer’s taxable year. This clause shall be applied without regard to use of the vehicle by any organization which is described in section [501 \(c\)](#) and exempt from tax under section [501 \(a\)](#).

(f) Exempt sales; other payments or refunds available

(1) Gasoline used on farms

This section shall not apply in respect of gasoline which was (within the meaning of paragraphs (1), (2), and (3) of section [6420 \(c\)](#)) used on a farm for farming purposes.

(2) Gasoline used in aviation

This section shall not apply in respect of gasoline which is used as a fuel in an aircraft—

(A) in aviation which is not commercial aviation (as defined in section [4083 \(b\)](#)), or

(B) in commercial aviation (as so defined) with respect to the tax imposed by section [4081](#) at the Leaking Underground Storage Tank Trust Fund financing rate and, in the case of fuel purchased after September 30, 1995, at so much of the rate specified in section [4081 \(a\)\(2\)\(A\)](#) as does not exceed 4.3 cents per gallon.

(3) Gasoline used in trains

In the case of gasoline used as a fuel in a train, this section shall not apply with respect to—

(A) the Leaking Underground Storage Tank Trust Fund financing rate under section [4081](#), and

(B) so much of the rate specified in section [4081 \(a\)\(2\)\(A\)](#) as does not exceed the rate applicable under section [4041 \(a\)\(1\)\(C\)\(ii\)](#).

(g) Applicable laws

(1) In general

All provisions of law, including penalties, applicable in respect to the tax imposed by section [4081](#) shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section [7602 \(a\)](#) (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(h) Regulations

The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(i) Income tax credit in lieu of payment

(1) Persons not subject to income tax

Payment shall be made under subsections (a) and (b) only to—

(A) the United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section [501 \(a\)](#) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception

Paragraph (1) shall not apply to a payment of a claim filed under subsection (d)(2).

(3) Allowance of credit against income tax

For allowance of credit against the tax imposed by subtitle A, see section [34](#).

(j) Cross references

(1) For civil penalty for excessive claims under this section, see section [6675](#).

(2) For fraud penalties, etc., see chapter 75 (section [7201](#) and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State and ^[2]a subdivision of an Indian tribal government as a political subdivision of a State), see section [7871](#).
